

## **Guidance on Obtaining Consent for Section 20 Accommodation and Removal of a Child**

1. *Social Workers should follow the guidance set out below in all situations where parent/parents are being asked to consent to the voluntary accommodation of their child/children who are aged under 16 (for any children over 16 please seek advice from the legal section). This guidance is based on legal principles as set out in the case of RE CA (A Baby) and other relevant case law. Careful consideration on these guidelines is especially important in cases where parent/parents may have learning difficulties, have recently given birth, have undergone trauma or are being administered strong medication*

2. When Social Workers are seeking a Section 20 Consent from a parent for the removal of a child, particularly when immediately or soon after birth:

i) Every Social Worker has a personal duty to be *satisfied that the person giving consent has the capacity to do so.*

ii) The Social Worker ought to consider questions raised by Section 3 of the Mental Capacity Act in order to determine whether the person making the Section 20 Agreement has the capacity to do so. See appendix 1 for guidance.

iii) If the Social Worker has *doubts about capacity, he or she should make no further attempt to obtain consent at this time.*

iv) If the Social Worker believes that the person has capacity he or she must *also be satisfied that the person consenting is fully informed by means of the guidance for parents attached as appendix 2 of:*

- *The consequences;*
- *The ability to refuse consent;*
- *The range of choices available;*
- *All of the facts and issues relevant to decision making.*

v) The Social Worker *must also be satisfied that the subsequent removal is both fair and proportionate. In deciding on this issue the Social worker must consider the following matters:*

*a. What is the current Physical and psychological state of the parent?*

*b. If they have a Solicitor Have they been encouraged to seek legal advice and/or advice from family or friends?*

*c. Is it necessary for the safety of the child for her to be removed at this time?*

*d. Would it be fairer in this case for this matter to be the subject of a court order rather than an agreement?*

4. If the Social Worker is satisfied that, having carefully considered the above, the parent/parents have capacity, understand the consequences of Section 20 and positively request that child/children are accommodated, Appendix 3 Form should be completed and signed.

## Appendix 1

### Section 3 Mental CAPACITY Act 2005

*"[A]n assessment of a person's capacity must be based on their ability to make a specific decision at the time it needs to be made, and not on their ability to make decisions in general."*

There are four criteria set out in the Mental Capacity Act (section 3) as to why a person may not be able to make a decision. The criteria relates to whether the person is able to:

- comprehend the information relevant to the decision (which requires the information to have been presented to that person in a way appropriate to their circumstances)
- retain this information for long enough to make the decision (with the fact that the period of retention may be short is irrelevant to this consideration)
- use and weigh the information to arrive at a choice (which requires an understanding of the consequences of making a decision one way or the other, or of failing to make a decision)
- communicate the decision

An inability to fulfil one of these criteria will result in a finding that the person is unable to make a decision, subject to the proper application of all the principles of the Act.

## Appendix 2 Guidance for Parents

This is a Guide for Social workers to give to parents their rights in respect of Section 20 Consent to Voluntary Care to enable them to make an informed decision as to whether to consent. This guidance only relates to children under 16.

### 1. Ability to refuse consent

It is your decision as a parent whether you wish to consent to your child being placed in Section 20 Voluntary Care. There is no obligation on you if approached by a Social Worker to agree to Section 20.

### 2. Consequences of giving consent

If you give consent to Section 20 your child will be placed with your agreement in a foster home or another type of placement chosen by Children's Services. The foster carer will carry out day to day care for your child and subject to your consent arrange with the Doctor for medical treatment. An agreement will be reached with you as to your contact with the child. Any major decisions about the child will still require your agreement. If at any time while the child is Section 20 accommodated you wish to remove the child from foster care you are entitled to do so by informing the Social Worker.

### 3. The range of choices available to you

In reaching a decision as to whether you consent to Section 20 care should consider whether you agree that the child should be cared for in voluntary care or whether you disagree. You may also wish to consider whether you want to put forward to the Social Worker an alternative arrangement for the care of the child with another family member or other friend of yours.

### 4. The consequences of refusal

If you do not agree to your child being placed in Section 20 care the Social Worker may depending on the circumstances of the child decide that if there are child protection concerns about your child that a Court Order should be obtained in relation to your child. In such a situation the Social Worker will explain to you the process involved and your rights within those proceedings.

### 5. The facts and issues material to giving consent

You are entitled to raise any questions which you wish with the Social Worker about the planned arrangements for your child prior to agreeing to Section 20 accommodation. You are also entitled to seek advice from a lawyer before you reach a decision as to Section 20 accommodation or at any point while your child is Section 20 accommodated as to whether you wish to continue with that consent. If you do not feel able to make a decision as to whether the consent for any reason you should inform the Social Worker of this and you will not be expected to consent. In Particular if you feel unwell when you are approached for consent you should inform the Social Worker that you are not in a position to give consent.

### **APPENDIX 3**

#### **Parents Consent to their Child being accommodated under S.20 Children Act 1989**

##### **Child/Children's details**

Name:	DOB:
Name:	DOB:
Name:	DOB:

##### **Parents Details:**

Name:	DOB:
Name:	DOB:

I/We, the person/s with parental responsibility for the above named children consent to them being accommodated by the Local Authority under Section 20 of the Children Act 1989.

I/We confirm that I have been fully informed of:

- the consequences of this decision
- the ability to refuse consent
- the range of choices available
- all of the facts and issues material to giving consent

Signed \_\_\_\_\_ Signed \_\_\_\_\_

Dated:

Dated: